

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

EDUARDO SANCHEZ §
v. § CIVIL ACTION NO. 5:12cv112
JEFFREY CALFEE, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

The Plaintiff Eduardo Sanchez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Sanchez filed a motion asking for a default judgment against two of the Defendants, William Jones and Terry Cornelious. After review of the pleadings, the Magistrate Judge issued a Report recommending the motion for default judgment be denied because Jones answered within 30 days after summons was issued to the U.S. Marshal and nothing in the record showed service had been effected upon Cornelious.

Sanchez filed objections to the Report on April 18, 2013. In his objections, Sanchez states that he believed summons were issued on January 23 and the Defendants had 30 days in which to answer. He states Cornelious was a “prime actor” and asks that Cornelious be held in default, but does not address the fact that the record does not reveal that Cornelious has been served with process.

The docket shows summons was issued for Cornelious at his last known address on January 23, 2013, and delivered to the U.S. Marshal for service. However, the record does not reflect that service of process was ever effected upon Cornelious. Until Cornelious is properly served, Sanchez cannot obtain a default judgment. Thompson v. Johnson, 348 Fed.Appx. 919, 2009 WL 3199647 (5th Cir., October 6, 2009), *citing* Rogers v. Hartford Life & Acc. Ins. Co., 167 F.3d 933, 937 (5th Cir. 1999). The Magistrate Judge properly recommended that Sanchez's motion for a default judgment be denied. Sanchez's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 30) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for a default judgment (docket no. 23) be and hereby is DENIED.

It is SO ORDERED.

SIGNED this 17th day of May, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE